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**2 UNITED STATES BANKRUPTCY COURT**

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

## **6 | In the Matter of:**

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## **8 DELPHI CORPORATION,**

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18 January 5, 2007

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21 | B E F O R E:

22 HON. ROBERT D. DRAIN  
23 U.S. BANKRUPTCY JUDGE

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2 HEARING re Motion for Order (i) Authorizing Debtors to Obtain  
3 Post-Petition Financing and (ii) Authorizing Debtors to  
4 Refinance Secured Post-Petition Financing and Pre-Petition  
5 Secured Debt

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7 HEARING re Limited Objection to the Motion for Order (i)  
8 Authorizing Debtors to Obtain Post-Petition Financing and (ii)  
9 Refinance Secured Post-Petition Financing and Pre-Petition  
10 Secured Debt filed by Howard County, Indiana

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P R O C E E D I N G S

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THE COURT: Please be seated. Okay. Delphi Corporation?

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MR. BUTLER: Your Honor, good morning. Jack Butler and Kayalyn Marafioti from the Skadden firm here representing Delphi Corporation on a specially set hearing dealing with our expedited motion for approval of a replacement debtor-in-possession financing facility. The DIP financing motion was filed at Docket number 6180.

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Your Honor, there's been only one objection filed to this motion. It was the limited objection of Howard County, Indiana to the DIP at Docket number 6369 and that matter was based on a concern that Howard County had that somehow the refinancing could negatively affect their tax liens. That objection was resolved and they understood that the refinancing does not adversely in any material respect their current priority of their tax liens to secure outstanding tax claims relative to other liens. And we've assured them that the tax liens will have the same priority relative to the first priority DIP liens as they currently have relative to the existing DIP liens and will have the same priority relative to the second priority DIP liens as they currently have relative to the liens held by the pre-petitioned secured lenders. On that basis, Howard County is not pressing their objection.

Your Honor, we also filed, in addition to a reply to

1 that objection, we filed a summary of modifications to the form  
2 of order of credit agreement, Docket number 6446. I'd like to  
3 briefly address the changes to be made since the filing of the  
4 motion.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, with respect to the proposed  
7 order, we have made four changes to conform the order to the  
8 underlying agreements between the parties. First, we changed  
9 paragraph 5(b) to reflect that the pre-default carve-out for  
10 professional fees will increase from five to ten million  
11 dollars. That's because assuming that at some point the ECPA  
12 is approved, the investment agreement is approved. The  
13 transaction expenses defined under that agreement are included  
14 within the carve-out and, therefore, the amount of the carve-  
15 out was increased.

16 We added -- the second thing we did was add a clause  
17 3 to the end of paragraph 5(a) to make it clear that the  
18 Tranche C super party claims are the pari passu with the right  
19 to the setoff claimants.

20 Third, we add a paragraph 10 and amended paragraph 11  
21 to clarify that the lenders under both the DIP facility and the  
22 pre-petition facility would receive the fees, expenses and  
23 indemnities that they're entitled to under the respective loan  
24 documents.

25 And, finally, what is now paragraph 14, we added

1 language to make clear that the liens held by the pre-petition  
2 lenders are valid and that the pre-petition lenders' claims are  
3 valid and oversecured.

4 With respect to the credit agreement, we also filed a  
5 blacklined credit agreement yesterday as part of our reply.  
6 And there were two primary changes made to that credit  
7 agreement since the agreement we filed on December 26th. Your  
8 Honor may recall that while this motion was filed earlier, your  
9 scheduling order had indicated that we should file a credit  
10 agreement on December 26th. We did do that and serve it.  
11 There were two changes to the credit agreement that is before  
12 the Court today.

13 The first is the increase in the carve-out that I  
14 just mentioned that was described also in a DIP order. The  
15 second are provisions governing whether the debtors can undergo  
16 a change of corporate control without being in default of the  
17 terms of the credit agreement. The change of control provision  
18 contained in the December 26th agreement provided the  
19 acquisition of a controlling stake in the debtors by the plan  
20 investors was not a default but any other change of control  
21 constituted default. Given the Highland offer and given other  
22 facts and circumstances, the DIP lenders agreed that the  
23 occurrence of a change of control default based on the  
24 acquisition of Delphi's stock would be deleted. And that has  
25 been eliminated from the credit agreement.

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1               Those, Your Honor, are the primary changes to the two  
2 documents. As Your Honor's aware, this motion deals with,  
3 really, two facilities the debtors have. First, our existing  
4 DIP facility, which consists of a 1.75 billion dollar revolving  
5 line of credit and a 250 million dollar term loan with a  
6 maturity date of October 8th, 2007.

7               The second facility this addresses are the secured  
8 obligations that arise under a third amended and restated  
9 credit agreement in a pre-petition period dated June 14th,  
10 2005. And as of the petition date, the debt to that group of  
11 lenders was in the approximate amount of 2.6 billion dollars  
12 and it's now just slightly under, I think approximately 2.5  
13 billion dollars.

14              Your Honor, this agreement provides for the  
15 refinancing of both of those transactions and to a DIP  
16 transaction of approximately 4.5 billion dollars. One thing I  
17 want to point out in connection with the pre-petition lenders  
18 agreement, this will resolve and will conclude obviously, upon  
19 closing, all the cash collateral provisions and protections  
20 that have been put in place with respect to the pre-petition  
21 facilities. Your Honor will recall we had some extended  
22 litigation about that in the beginning of the case.

23              I do want to point out that the pre-petition lenders  
24 have reserved their rights to challenge our ability under a  
25 plan of reorganization to discharge certain obligations under

1 the facility even though it's been repaid and they reserve the  
2 right to raise those issues in the planning confirmation  
3 context. And of course, we reserved our rights to argue to the  
4 contrary. That mostly has to do with indemnifications and  
5 other kinds of claims that they might argue would be contingent  
6 in nature.

7 Your Honor, with respect to the replacement facility,  
8 it is substantially similar in terms of its terms and  
9 conditions to the DIP facility. The primary changes here, from  
10 the debtors' perspective, are obviously the size. It's  
11 increased by about 2.5 billion dollars. But more importantly,  
12 it's the economics. As we said in our motion, we had the  
13 opportunity to take advantage of very robust capital markets  
14 that allowed us to execute what really is, you know, if not the  
15 large -- I think it's approximately the largest DIP ever  
16 financed. This financing at 4.5 billion dollars is being  
17 undertaken by our agents and placements on a best efforts  
18 basis. That's resulted in us spending relatively little money  
19 in terms of commitment and other transactions and, yet, we have  
20 a very reasonable degree of confidence that come next week, if  
21 Your Honor approves this, it in fact, will close. When it  
22 closes, we'll save about eight million dollars a month in  
23 interest expense as a result of being able to refinance the  
24 pre-petition security -- pre-petition facilities rates that are  
25 currently running us between twelve and a quarter, thirteen and

1 three quarters percent. And when you look at the base rate  
2 calculation under that facility -- to, at the moment, a cost of  
3 about 8.6 percent which is calculated at 325 basis points above  
4 LIBOR.

5 In addition, our DIP lenders have agreed to reduce  
6 the actual interest charged on the DIP itself from a post-  
7 petition basis by reducing that by twenty-five basis points.  
8 And that reduces the effective interest rate, at least  
9 estimated at close, from just over eight percent to about just  
10 under 7.9 percent. And so there's a reduction there. When you  
11 do the math, that saves us, based on the current usage of the  
12 DIP, about eight million dollars a month which happens to be  
13 about what the cost of putting this facility in place is. So  
14 the payback on this particular transaction is one month. We  
15 should be so fortunate to have those kinds of paybacks in large  
16 transactions we bring before the Court.

17 Your Honor, I also wanted to point out that, as this  
18 will result in the repayment of the pre-petition credit  
19 facility, the proposed order does provide that the January 18,  
20 2007 deadline, under paragraph 16 of the existing DIP order for  
21 the creditors' committee to review the pre-existing liens and  
22 other aspects of the pre-existing transaction, would be  
23 terminated upon entry of the proposed order.

24 Your Honor, the last thing I would indicate to the  
25 Court, and just in terms of introduction to this, is that the

1           refinancing of the existing bank debt is permitted under the  
2           relevant transaction documents that we have been dealing with  
3           throughout this case. Article 2.10 of the pre-petition credit  
4           facility specifically permits the debtors to prepay the pre-  
5           petition credit facility and we had negotiations in connection  
6           with the existing DIP facility where the secured lenders waived  
7           their right to any prepayment premiums or prepayment penalties.  
8           There's also a paragraph of the existing DIP order, paragraph  
9           12(c), which permits prepayment of the pre-petition credit  
10          facility if that prepayment is part of a transaction in which  
11          the obligations of the existing DIP facility and the pre-  
12          petition credit facility are repaid or refinanced in whole,  
13          which is exactly what the transaction before Your Honor does.

14           We have, Your Honor, in the courtroom Mr. Sheehan,  
15          the chief restructuring officer of the company, and Mr. Shaw,  
16          our investment banker from Rothschild, who were both  
17          instrumental in representing the company's interest in this  
18          refinancing transaction, including the solicitation of  
19          interests from various lenders, looking at competing facilities  
20          and ultimately deciding on the structure moving forward. We  
21          could either proffer that testimony or otherwise present them  
22          to Your Honor if Your Honor wants to hear them but there are no  
23          objections to the facility.

24           THE COURT: Well, why don't you give me just a brief  
25          proffer since the order refers to it?

1                   MR. BUTLER: Your Honor, Mr. Sheehan is here and if  
2 called to testify, he would testify that the debtors solicited  
3 and entertained offers for replacement financing from lenders  
4 who had already conducted extensive due diligence of the  
5 debtor. He would testify that in the debtors' business  
6 judgment, the proposal by JP Morgan offered the most favorable  
7 terms due to the transaction cost savings and the efficiency  
8 that only the debtors' established lending agent could provide  
9 in that it gave, from the company's perspective, it was the  
10 business judgment that they were the most efficient party to be  
11 able to effect this refinancing transaction.

12                  Mr. Sheehan would testify that the replacement  
13 financing facility will have essentially the same terms as the  
14 existing DIP facility except for terms which are, in the  
15 judgment of the debtors, more favorable to the debtors and the  
16 estates, including an increase in the size of the facility of  
17 4.5 billion, a savings of considerable interest as I described  
18 to you in terms of the change in interest rates that I've  
19 previously described on the record and an economic cost to  
20 complete the new transaction in terms of fees of eight million  
21 dollars or less based on a best interest refinancing and  
22 undertaking by JP Morgan.

23                  Mr. Sheehan would testify that the fees charged by JP  
24 Morgan and the lender group are, in the judgment of the  
25 debtors, comparable to those sought by the other bidding

1 investment bank group and the expenses will be recovered early  
2 in the first quarter of this year.

3 Your Honor, I think Mr. Sheehan would testify,  
4 finally, that, in the debtors' business judgment, the savings  
5 and beneficial terms to be achieved by this facility will and  
6 should maximize the recovery for all stakeholders and the  
7 refinancings in the best interest of the debtors' estates.  
8 That would be the sum and substance of Mr. Sheehan's testimony.  
9 I also have the proffer of Mr. Shaw.

10 THE COURT: Okay. And I'm assuming, given that there  
11 are no objections, no one wants to cross-examine Mr. Sheehan?  
12 Okay. I'll hear the other proffer.

13 MR. BUTLER: With respect to Mr. Shaw called to  
14 testify, he would testify that he's the director at Rothschild,  
15 Inc., which is the financial advisory investment banker for the  
16 debtors. He would testify that as a result of the favorable  
17 conditions in the capital markets coupled with the positive  
18 momentum in the debtors' reorganization, the debtors concluded  
19 with the assistance of Rothschild that refinancing the debtors'  
20 secured debt facilities at this moment in their cases could  
21 lead to a considerable savings and better position the debtors  
22 to merge from Chapter 11 reorganization.

23 Mr. Shaw would testify that Rothschild assisted the  
24 debtors in soliciting and reviewing offers for replacement  
25 financing from lenders who had already conducted extensive due

1 diligence to the debtors. He would testify that the proposal  
2 submitted by JP Morgan offered, in the opinion of Rothschild  
3 and the debtors, the most favorable terms due to the  
4 transaction cost savings and the efficiency of the debtors'  
5 established lending agent could provide.

6 He would testify that the terms of the replacement  
7 financing facility, including the fees charged by the lenders  
8 and the interest rates charged for the financing are fair, are  
9 comparable to those sought by the other bidding investment bank  
10 group and represent, in the opinion of Rothschild, the market  
11 rates for financing facility such as these.

12 Mr. Shaw would further testify that the rate  
13 decreases described in the motion are not guaranteed and only  
14 represent estimates of the rates that will be obtained based on  
15 their experience -- JP Morgan's experience in deals of this  
16 nature. But that the lack of underwriting has enabled the  
17 debtors to benefit from low fees in terms of fees paid to  
18 accomplish and implement the transaction.

19 Mr. Shaw would testify that, in Rothschild's analysis  
20 and the debtors' analysis, that the repayment of the pre-  
21 petition secured debt is appropriate because it appears to be,  
22 and the debtors believe that it is oversecured. And he would  
23 also finally testify that, based on his expertise and that of  
24 Rothschild's, Rothschild advised the debtors that the savings  
25 and beneficial terms to be achieved through the financing

1 facility should maximize the recovery for stakeholders and  
2 refinancing was, in his opinion, and is, in his opinion, in the  
3 best interest of the debtors' estate. That would be the sum  
4 and substance of Mr. Shaw's testimony.

5 THE COURT: Okay. Does anyone want to cross-examine  
6 Mr. Shaw? All right. I'll accept that proffer.

7 MR. BUTLER: Thank you, Your Honor. I have nothing  
8 further, Your Honor unless the Court has questions.

9 THE COURT: You said that this is expected to close  
10 next week?

11 MR. BUTLER: Yes, Your Honor.

12 THE COURT: And I guess that's why the document was  
13 dated January 9th?

14 MR. BUTLER: Yes, Your Honor.

15 THE COURT: Okay. All right.

16 MR. BUTLER: And that's also why we're asking the  
17 Court to make the order immediately effective.

18 THE COURT: Okay. And there's no pre-payment premium  
19 or penalty on this facility either, is there?

20 MR. BUTLER: No, Your Honor. No premium payment or  
21 penalty is being paid to anyone.

22 THE COURT: Okay. Does anyone have anything to say  
23 on this motion?

24 MR. SEIDER: Yes, Your Honor, if I might be heard  
25 briefly.

1 THE COURT: Sure.

2 MR. SEIDER: Mitchell Seider of Latham & Watkins on  
3 behalf of the official committee of unsecured creditors. Your  
4 Honor, after the debtors described the proposed financing to  
5 the committee, it certainly sounded attractive and so the  
6 committee set about doing diligence. We reviewed the documents  
7 that were filed with the Court as well as the fee letter and  
8 the commitment letter and the committee, through its  
9 professionals, were satisfied that the economics were as they  
10 had been represented to us and, therefore, it was attractive.

11 We along with the assistants of the committee's  
12 conflicts counsel made a few comments to the debtors with  
13 respect to the proposed order and the credit agreement. Those  
14 comments have been incorporated into the revised order and the  
15 revised credit agreement, as Mr. Butler described, and we are  
16 now satisfied with the form of order and with the credit  
17 agreement and, of course, we'd support the entry of the order.

18 THE COURT: Okay. And so your review included an  
19 assessment of the pre-petition secured lenders' rights?

20 MR. SEIDER: Yes, Your Honor, and I thank you for  
21 raising that. Conflicts counsel has been diligencing that  
22 issue since the time really of its hire and we are satisfied  
23 now that that is appropriate under the circumstances.

24 THE COURT: All right. Well, I reviewed the, not  
25 only the motion but the blacklined proposed order and

1 blacklined agreement and each of the changes made improves the  
2 transaction as far as the estates are concerned. It's  
3 obviously somewhat unusual to pay down two and a half billion  
4 of pre-petition debt. However, given the circumstances of this  
5 case, not only the committee's review of the lenders' liens but  
6 also as reflected by, among other things, the advents of any  
7 remaining objection to this motion, I think the various  
8 constituents of the debtors, as well as myself, are satisfied  
9 that the benefits of this refinancing, and that includes  
10 refinancing of the pre-petition debt, exceed the value to the  
11 estate of keeping the pre-petition debt in place and keeping  
12 the existing DIP in place.

13 So I will approve the refinancing as sought.

14 MR. BUTLER: Thank you, Your Honor. Your Honor, I  
15 have a clean copy of the final order, if I can pass it up.

16 THE COURT: That's fine. So that will get entered  
17 today. Given that there were no remaining objections and the  
18 benefit to the debtors of closing the transaction promptly, I  
19 have no problem with the waiver of the ten-day period.

20 MR. BUTLER: Thank you, Your Honor. Your Honor,  
21 that's the only matter on today's agenda.

22 THE COURT: Okay. Very well. Thank you.

23 (Whereupon this proceeding concluded at 10:23 a.m.)

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I N D E X

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R U L I N G S

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2 C E R T I F I C A T I O N

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4 I, court approved transcriber, certify that the foregoing is a  
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